

9 July 1984

MEMORANDUM FOR: Deputy Director, Special Programs and  
Benefits, Office of Personnel

Deputy Director, Policy, Analysis, and  
Evaluations, Office of Personnel

STAT FROM:

Liaison Division  
Office of Legislative Liaison

SUBJECT: Civil Service Spouse Retirement Equity:  
Office of Personnel Management Proposal

REFERENCE: Memorandum dated 22 June 1984 (H.R. 2300)

1. Attached hereto is a draft bill and statement of Purpose and Justification on Civil Service Spouse Retirement Equity. This proposal was submitted to Congress on 11 June by the Office of Personnel Management.

2. The OPM draft is similar to the redrafted H.R. 2300 (see reference) with OPM's following exceptions to H.R. 2300:

- a) OPM does not want responsibility to inform employees, spouses/former spouses each year of their rights
- b) OPM is against the retroactive provisions

3. Also attached is a 2 July 1984 article from the "Federal Times" that suggests that Congress and OPM are determined to work out differences and to get a Bill out this year. Staffers on both the Senate and House side report that the controversial points in the legislation now are being ironed out and that legislation very similar to the redrafted version of H.R. 2300 (see reference) will be enacted this year.

STAT

Attachments:  
as stated

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# Spousal Annuity Plan Gets White House Support

By Winston Wood

In an unusual display of legislative harmony, House Democrats and the Reagan administration have agreed to work together to iron out problems in the way court-ordered survivor benefits are paid to divorced husbands and wives of federal retirees.

Office of Personnel Management compensation chief James Morrison told the House compensation and employee benefits subcommittee that the White House "is committed to the issue of spousal equity," and will work with the panel to enact a bill this year.

At issue are discrepancies in current federal retirement statutes that permit the government to honor divorce court orders regarding property settlements that include federal annu-

~~ities, but not survivor benefits.~~

Subcommittee chairwoman Mary Rose Oakar, D-Ohio, and OPM have tussled over a number of civil service issues this year, most recently an Oakar-sponsored plan to study the federal wage-setting system for sex discrimination.

At a hearing on pension equity legislation June 20, however, the OPM aide and the Ohio Democrat agreed the problem has become serious and that with Congress moving to address it in private pension programs, civil service spousal equity is an issue whose time has come.

"You have made history," Oakar joked when Morrison open his testimony at the session by saying the administration agrees with her concern over the issue. "You can stop right there."

OPM has introduced a bare-boned spousal equity bill that would change the language in federal pension law to allow similar treatment in divorce cases for both civil service annuities and survivor benefits. It would also require that when a federal worker elects to waive his or her survivor benefits and collect a larger pension, the ex-spouse must give her or his consent.

Currently, pension law only requires that a federal worker inform the ex-spouse of such a waiver.

The issue has been building steam on Capitol Hill for several years, and both the House and Senate have passed bills imposing spousal equity provisions in private pension plans regulated by the Employee Retirement Income Security Act.

Last fall Oakar and Rep. Patricia Schroeder, D-Colo., heard testimony on a different approach to spousal equity in federal pensions, which would not only have permitted OPM to obey court-ordered survivor benefit payments, but also would have pro-rated pensions while the retired federal worker is still living.

The two legislators revised the plan in the face of considerable opposition from retiree groups, the White House and even some federal unions.

There are still complaints about language in the new bill that would allow courts to order survivor benefits be paid long after the original divorce decree, however. Legislators and OPM will work on this provision to get a bill out by the end of the year.



United States  
**Office of  
Personnel Management**

Washington, D.C. 20415

**JUN 11 1984**

In Reply, Refer To

Your Reference

Honorable Thomas P. O'Neill, Jr.  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

The Office of Personnel Management submits herewith a legislative proposal "To amend title 5, United States Code, to provide more equitable benefits for spouses and former spouses under the Civil Service Retirement System, and for other purposes." This proposal is designed to conform the Civil Service Retirement System to the provisions of the President's proposed Pension Equity Act. We request that you refer this proposal to the appropriate committee for early consideration.

Last September, the President proposed the Pension Equity Act (H.R. 4032), which would amend the Employee Retirement Income Security Act and the Internal Revenue Code to require private-sector pension plans to provide survivor benefits for a former spouse of a retired employee to the extent ordered by a State court in dissolving the marriage. The President's proposal would also require private pension plans to prohibit a covered employee from waiving a reduction in his annuity in order to provide survivor benefits for his current spouse, unless the spouse consents in writing to the waiver. Since the Pension Equity Act would affect only the private sector, it is necessary to amend the Civil Service Retirement law in order to bring its provisions into conformance, where appropriate, with the changes the Pension Equity Act would impose on private pension plans. The Civil Service Retirement law already requires the Office of Personnel Management to comply with State court orders stipulating that a portion of a Federal employee's retirement benefits must be paid to his or her former spouse throughout the retired employee's lifetime, and the proposal would extend this provision to permit payment of survivor benefits when a State court so orders. The Retirement law now requires a retiring employee's current spouse to be informed of the employee's election to waive survivor benefits. The proposal would change this provision to require the spouse's consent to such a waiver.

The proposal also includes a technical amendment standardizing the length-of-marriage requirement for entitlement to survivor benefits at 9 months for all widows and widowers, regardless of whether they were married to the employee at the time of retirement. Currently, the Civil Service Retirement law imposes a one-year requirement for marriages which occur after retirement and on cases involving death in service, while imposing no requirement at all where a marriage exists at the time of retirement.

Honorable Thomas P. O'Neill, Jr.

We believe this legislative proposal makes clear our commitment to equitable treatment of spouses and former spouses of employees under the Civil Service Retirement System.

The Office of Management and Budget advises that enactment of this proposal would be consistent with the Administration's objectives.

A similar letter is being sent to the President of the Senate.

Sincerely,

A handwritten signature in dark ink, appearing to read "Donald J. Devine", with a long horizontal flourish extending to the right.

Donald J. Devine  
Director

Enclosures

## STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill

"To amend title 5, United States Code, to provide more equitable benefits for spouses and former spouses under the Civil Service Retirement System, and for other purposes."

Last September, the President proposed the Pension Equity Act (H.R. 4032), which would amend the Employee Retirement Income Security Act and the Internal Revenue Code to require private-sector pension plans to provide survivor benefits for a former spouse of a retired employee to the extent ordered by a State court pursuant to the dissolution of the marriage. The President's proposal would also require private pension plans to prohibit a covered employee from waiving a reduction in his annuity in order to provide survivor benefits for his current spouse, unless the spouse consents in writing to the waiver. Since this proposal would affect only the private sector, it is appropriate for the Office of Personnel Management to propose amendments conforming the Civil Service Retirement law, where appropriate, to these provisions of H.R. 4032.

The Office is already required, under 5 U.S.C. 8345(j), to comply with State court orders apportioning a retired employee's benefits between the employee and his former spouse at the time of divorce. However, these payments to the former spouse continue only during the retiree's lifetime, since there is no authority for the Office to pay survivor benefits to the former spouse after the retiree's death.

An amendment establishing such authority, in compliance with State court orders, would be a logical extension of the present authority under 5 U.S.C. 8345(j) to apportion retirement benefits. Under the proposed bill, the total of survivor annuities payable to the current spouse and all former spouses of a retiree could not exceed 55 percent of that retiree's annuity. In order to make it difficult for a former employee with future title to an annuity to evade the obligation to provide a survivor annuity for a qualified former spouse, the bill would prohibit payment of a refund of an employee's retirement contributions in lieu of annuity if the employee has a former spouse who would qualify for a survivor annuity under the bill.

The proposal would also require a current spouse's written consent to a retiring employee's decision to waive a reduction in his annuity for the purpose of providing survivor benefits. Moreover, the current spouse of a former employee with future title to an annuity would have to consent to the employee's application for a refund of his retirement contributions before the refund could be paid. These changes would be a reasonable extension of the present requirement under 5 U.S.C. 8339(j)(2) that the current spouse of a retiring employee must be informed of the employee's decision not to provide a survivor annuity, and they would be consistent with the protections the proposal extends to the annuity rights of former spouses.

-2-

In addition to these amendments, the proposal would effect a technical change in the length-of-marriage requirement for entitlement to survivor benefits. Present law imposes a one-year requirement for marriages which occur after retirement and in cases involving death in service, while imposing no requirement at all where a marriage exists at the time of retirement. The proposal would standardize the length-of-marriage requirement for entitlement to survivor benefits at 9 months for all widows and widowers, regardless of whether they were married to the employee at the time of retirement. Also, the proposal would deem the marriage requirement for receipt of survivor benefits satisfied in case of accidental death or in cases involving remarriage in which the aggregate time married is at least 9 months. This provision is similar to that contained in the Social Security law.

A BILL

To amend title 5, United States Code, to provide more equitable benefits for spouses and former spouses under the Civil Service Retirement System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Service Retirement Spouse Equity Act of 1984".

Sec. 2. Chapter 83 of title 5, United States Code, is amended--

(1) by amending section 8339(j) to read as follows:

"(j)(1) The annuity computed under subsections (a)-(i) and (n) of this section (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and his spouse under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (3) of this subsection in order to provide a survivor annuity for his spouse under section 8341(b) of this title, unless the employee or Member and his spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time of the employee's or Member's retirement. Each such election must be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office may provide, by regulation, that an employee or Member may waive the survivor annuity without his spouse's consent, if the employee or Member establishes to the satisfaction of the Office that his spouse's whereabouts cannot be determined.

"(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the employee's or Member's annuity computed under subsections (a)-(i) and (n) of this section (or any applicable portion of the annuity, in the event that the



-2-

former spouse is entitled to less than the entire survivor annuity) is reduced as provided in paragraph (3) of this subsection.

"(3) In order to provide a survivor annuity under section 8341 of this title, the annuity of an employee or Member (or any applicable portion thereof) is reduced by  $2\frac{1}{2}$  percent of the first \$3,600 of the employee's or Member's annuity, plus 10 percent of the amount of the employee's or Member's annuity exceeding \$3,600.

"(4)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be eliminated for each full month after the death of the spouse or after the dissolution of the spouse's marriage to the employee or Member, unless the spouse is entitled, as a former spouse, to a survivor annuity as provided in section 8341(h) of this title, or unless an election is in effect under subparagraph (C) of this paragraph.

"(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be eliminated for each full month after the former spouse dies or, before reaching age 60, remarries, unless the employee or Member elects, within 1 year after the former spouse's death or remarriage, to continue the reduction in order to provide a greater survivor annuity for his current spouse, or unless an election is in effect under subparagraph (C) of this paragraph.

"(C) Upon remarriage a retired employee or Member may irrevocably elect during such marriage, in a signed writing received by the Office within 1 year after such remarriage, a reduction in his annuity under paragraph (3) of this subsection for the purpose of providing an annuity for his spouse in the event such spouse survives him. Such election and reduction shall be effective the

-3-

first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.";

(2) in section 8341--

(A) in subsection (a)--

(i) in paragraphs (1)(A) and (2)(A) by striking out "1 year" and inserting in lieu thereof "9 months"; and

(ii) by inserting after paragraph (4) the following new paragraph:

"(5) 'former spouse' means the former spouse of an employee or Member who performed at least 18 months of civilian service covered under this subchapter, if the former spouse was married to the employee or Member for at least 9 months;"

(B) in subsection (b)--

(i) by amending paragraph (1) to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i) and (n) of this title or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived as provided under section 8339(j)(1) of this title, or in the case of remarriage, the employee or Member did not file an election under section 8339(j)(4)(C) of this title.";

(ii) in the second sentence of paragraph (3) by striking out "spouse, widow," both times it appears and inserting in lieu thereof "widow"; and

-4-

(iii) by adding at the end thereof the following new paragraph:

"(4) Notwithstanding the preceding paragraphs of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member shall be reduced by the amount of any annuity that is payable to a former spouse of the employee or Member under subsection (h) of this section.";

(C) in subsection (d) by inserting after the first sentence the following:

"Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member shall be reduced by the amount of any annuity that is payable to a former spouse of the employee or Member under subsection (h) of this section.";

(D) in subsection (e)--

(i) in paragraph (1) by inserting the following after "survived by a spouse" both times it appears: "or a former spouse"; and

(ii) in the last sentence of paragraph (2) by inserting the following after "surviving spouse" and "spouse": "or former spouse";

(E) in subsection (f) by inserting after paragraph (2) the following: "Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member shall be reduced by the amount of any annuity that is payable to any former spouse of the Member under subsection (h) of this section."; and

(F) by adding at the end thereof the following new subsections:

"(h)(1) A former spouse of a deceased employee, Member, or annuitant is entitled to a survivor annuity, or to a portion of a survivor annuity,

-5-

in accordance with subsection (b), (d), or (f) of this section, in the same manner as the widow or widower of an employee, Member, or annuitant, but only if and to the extent expressly provided for in the terms of any decree of divorce or annulment, or the terms of any court order or court-approved property settlement agreement incident to such decree, and only if no waiver of survivor annuity was executed with respect to such former spouse under section 8339(j)(1) of this title. The annuity payable to a former spouse under this subsection shall not exceed the amount specified under subsection (b), (d), or (f), as the case may be, and shall be reduced by the amount of any annuity that is payable under this subsection to any other former spouse (based on an earlier marriage) of the employee, Member, or annuitant. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Payments authorized by paragraph (1) shall begin no sooner than the first day of the second month after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

"(3) As used in this subsection, 'court' means any court of any State, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands.

"(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee's or Member's death in order to qualify as the employee's or Member's widow or widower shall be deemed satisfied where the employee or Member dies within the applicable 9-month period, if--

-6-

"(1) the death of the employee or Member is accidental; or

"(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced and the aggregate time married is at least 9 months (unless the Office of Personnel Management determines that at the time of the remarriage involved the individual could not reasonably have been expected to live for 9 months).";

(3) in section 8342(a)--

(A) in paragraph (3) by striking out "and" at the end thereof;

(B) in paragraph (4) by striking out the comma at the end thereof and inserting in lieu thereof "; and";

(C) by adding after paragraph (4) the following new paragraph:

"(5) who does not have a former spouse who qualifies for a survivor annuity under section 8341(h) of this title;"; and

(D) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: ", provided that the current spouse of the employee or Member concurs in the employee's or Member's application. Such concurrence must be made in accordance with such requirements as the Office shall prescribe. The Office may prescribe, by regulation, that an employee or Member may receive the lump-sum credit without his spouse's consent, if the employee or Member establishes to the satisfaction of the Office that his spouse's whereabouts cannot be determined."; and

(4) in section 8345--

(A) in subsection (f) by adding at the end thereof the following new paragraph:

-7-

"(4) The provisions of this subsection shall not apply to any annuity payable under section 8341(h) of this title."; and

(B) in subsection (j)(3) by striking out "or the District of Columbia" and inserting in lieu thereof the following: ", the District of Columbia, Puerto Rico, Guam, or the Virgin Islands".

Sec. 3. The amendments made by section 2 of this Act shall take effect 180 days after the date of enactment and shall apply to any individual who, on or after such effective date, is married to an employee or Member who, on or after such effective date, retires or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code.

## SECTION-BY SECTION ANALYSIS

To accompany a draft bill

"To amend title 5, United States Code, to provide more equitable benefits for spouses and former spouses under the Civil Service Retirement System, and for other purposes."

The first section provides the bill's title: the "Civil Service Retirement Spouse Equity Act of 1984."

Section 2 contains various amendments to provisions of chapter 83 of title 5, United States Code, concerning Civil Service Retirement.

Paragraph (1) of section 2 amends section 8339(j) to prevent a married retiring employee from electing to provide a reduced survivor annuity or no survivor annuity at all without his spouse's written consent. Under regulations to be prescribed by the Office of Personnel Management, the employee could waive the survivor annuity without his spouse's consent only if he could establish to the Office's satisfaction that the spouse's whereabouts cannot be determined. Section 8339(j) will also be amended to require a reduction in the annuity of an employee who has a former spouse entitled to an annuity under section 8341(h), as added by section 2 of the draft bill. This reduction will be eliminated if the former spouse dies or remarries before age 60, unless the retired employee elects within one year thereafter to continue the reduction in order to provide a greater survivor annuity for his current spouse, or unless, if the employee remarries, he elects to provide a survivor annuity for his new spouse.

Paragraph (2) of section 2 effects several amendments to section 8341, relating to survivor annuities. It amends subsections (a) and (b) of section 8341 to standardize the marriage requirement for entitlement to survivor benefits at 9 months for all widows and widowers, regardless of whether they were married to the employee annuitant at the time of retirement. Paragraph (2) adds a new definition of "former spouse" to section 8341(a) to prevent a former spouse who was married to an employee for less than 9 months, or who was married to an employee who performed less than 18 months of civilian service, from becoming entitled to a survivor annuity under section 8341(h). Section 8341(b) is also amended to conform to the requirement in section 8339(j) that a survivor annuity cannot be waived or reduced without the spouse's written consent. Paragraph (2) of section 2 of the draft bill adds a new paragraph (4) to section 8341(b) to provide that the survivor annuity payable to the widow or widower of a retired employee shall be reduced by the amount of any annuity payable to a former spouse of the deceased retiree under section 8341(h). Section 8341(d), which provides a guaranteed minimum survivor annuity to the widow or widower of an employee who dies in service, is amended to require such an annuity to be reduced by the amount of any survivor annuity that is payable to any former spouse of the employee under the new subsection (h).

-2-

Paragraph (2) of section 2 of the bill also amends subsections (e) and (f) of section 8341. Subsection (e) provides different amounts of children's annuities depending on whether or not the employee or retiree is survived by a spouse. Under the amendment to subsection (e), the same distinction would apply according to whether or not there is a surviving former spouse. Subsection (f) provides an annuity to the surviving spouse of a former Member of Congress who has title to a deferred annuity but who dies before reaching age 62 or before filing an application for annuity. Subsection (f) will be amended to require such a survivor annuity to be reduced by the amount of any annuity payable to any former spouse of the former Member under section 8341(h). Finally, two new subsections are added to section 8341. Subsection (h) requires the Office of Personnel Management to pay a survivor annuity to the former spouse of an employee or annuitant to the extent ordered by a State court in the event of divorce or annulment, provided that the former spouse had not waived the survivor annuity before the divorce. In no case could such an annuity exceed 55 percent of the employee's benefit. This annuity would be reduced by the amount of any annuity payable to any previous former spouse of the employee or retiree. Subsection (i) deems the marriage requirement for widows and widowers satisfied in cases of accidental death or in cases involving remarriage in which the aggregate time married is at least 9 months.

Paragraph (3) of section 2 amends section 8342(a) to prohibit payment of a refund to a separated employee who has a former spouse as defined in section 8341(a)(5) and to require the current spouse of an employee to consent in writing to the employee's application for a refund.

Paragraph (4) of section 2 amends section 8345(f) to provide that the floor on annuities shall not apply to any survivor annuity payable to a former spouse under section 8341(h). It also amends section 8345(j), concerning apportionment of retirement benefits in the event of divorce, to clarify that the Office of Personnel Management will comply with orders of courts in U.S. territories and possessions, as well as in the 50 States and the District of Columbia.

Section 3 provides that the amendments made by section 2 will take effect 180 days after enactment and will apply to an individual who, on or after the effective date, is married to an employee or Member who, on or after the effective date, retires or applies for a refund under the Civil Service Retirement System. This means that no survivor annuity may be paid to any former spouse who becomes divorced before the effective date. Moreover, no survivor annuity may be paid to a former spouse of an employee who retires before the effective date, regardless of when their divorce occurs.